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MARY ANN BLANCO, ET AL

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARY ANN BLANCO, ET AL,
Plaintiffs,

vs.

TRUMP RUFFIN TOWER I LLC
Defendant.

CASE NO. 2:11-cv-00153-GMN-PAL

**PLAINTIFFS' RESPONSE TO
DEFENDANT TRUMP RUFFIN TOWER I
LLC'S NOTICE OF SUPPLEMENTAL
AUTHORITY**

Plaintiffs Mary Ann Blanco et al, by and through their attorneys, hereby respectfully submit this response to Defendant Trump Ruffin Tower I LLC's ("Defendant") Notice of Supplemental Authority (the "Notice"), stating as follows:

Contrary to Defendant's representation that the decision in *Spradlin v. Trump Ruffin Tower LLC*, Case No. 2:08-CV-01428-KJD-RJJ, 211 U.S. Dist. LEXIS 61235 (D. Nev. June 6,

1 2011) involved “the same primary legal issue” that is presented by Plaintiffs’ Motion to Vacate
2 the Arbitration Award (the “Motion”) in this case (*see* Notice at 2), the issue in *Spradlin* was
3 completely different from the issue before this Court. While both the *Spradlin* motion to vacate
4 and Plaintiffs’ Motion require court scrutiny and review of an arbitration decision, neither case
5 involves any dispute as to the applicable standard of review. Indeed, the *Spradlin* court applied
6 the same standard of review to a motion to vacate an arbitration decision as that cited by the
7 parties in this case, namely, that an award should be vacated if the arbitrator exceeds the scope of
8 his authority by manifestly disregarding the law or issuing an order that is completely irrational.
9 *See Spradlin*, 211 U.S. Dist. LEXIS 61235, at *5; *see also* Trump’s Opp. to Motion to Vacate at
10 4:5-9; Plaintiffs’ Motion at 11:25-28. The *Spradlin* opinion did not cite any new authority,
11 contain any new analysis, or establish any new law regarding that standard. The Supreme
12 Court’s decision in *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 130 S. Ct. 1767 (2010) cited in
13 *Spradlin* merely restates the appropriate standard of review and does not change or expand that
14 standard from preexisting law. Thus, the “primary legal issue” in both *Spradlin* and Plaintiffs’
15 Motion is ***whether*** the respective arbitrators disregarded the particular law at issue in each case.

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18 In contrast to the instant case, *Spradlin* involved an analysis of an arbitration decision
19 concluding that class action arbitrations are not permissible in Nevada when the operative
20 arbitration clause is silent about that issue. In light of the *Stolt-Nielsen* decision and the absence
21 of a default rule allowing class action arbitrations under Nevada law, the arbitrator ruled that the
22 plaintiffs in *Spradlin* could not proceed with their class action arbitration. *See Spradlin*, 211
23 U.S. Dist. LEXIS 61235, at *7-9. Judge Dawson found not only that the arbitration decision was
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1 a matter of legal interpretation, but also that the arbitrator's decision was a correct ruling of law.¹
2 *See id.* Therefore, it is not at all surprising that Judge Dawson denied the *Spradlin* plaintiffs'
3 motion to vacate, as there was no basis to find that the arbitrator did anything other than correctly
4 apply the law in that case.

5 Unlike the plaintiffs in *Spradlin*, however, Plaintiffs in this action did not file a class
6 action arbitration. Rather, this case is merely a consolidated action of individual claims.
7 Defendant has previously filed motions before the arbitrator in this action and the Nevada state
8 court arguing that *Stolt-Nielsen* applies to consolidated actions and therefore precludes this
9 action. However, because *Stolt-Nielsen* does not apply to such consolidated actions, both the
10 arbitrator and the Nevada state court rejected Defendant's motions. Consistently, Judge Dawson
11 explained that "[n]owhere in *Stolt-Nielsen* is there any evidence for the proposition that state
12 default rules that allow for consolidation of arbitration under certain circumstances should be
13 interpreted to require class arbitration in agreements that do not mention class arbitration."
14 *Spradlin*, 211 U.S. Dist. LEXIS 61235, at *7 n.1. In short, *Stolt-Nielsen* applies only to class
15 action arbitrations and has no relevance to consolidated arbitrations like the case before this
16 Court.
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21 ¹ "Plaintiffs therefore claim that the Arbitrator erred in distinguishing class certification rules
22 from consolidation rules because such a ruling is contrary to *Stolt-Nielsen*. ... Even if Plaintiffs
23 were correct on these points, ... And they are not ... it is clear to this Court that the Plaintiffs'
24 repeated claims that *Stolt-Nielsen* stands for the principle that the 'state law 'default rule' for
25 consolidation of arbitration claims' should govern determinations about class arbitration are
26 completely incorrect." *Spradlin*, 211 U.S. Dist. LEXIS 61235, at *7 n.1.
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1 Moreover, the plaintiffs in *Spradlin* moved to vacate the arbitrator's decision on a basis
2 that is inapplicable under the established standard of review and is entirely different from that
3 alleged by Plaintiffs in this case. As the *Spradlin* opinion plainly states:

4 Plaintiffs do not argue that the arbitrator was dispensing her own
5 brand of industrial justice or making public policy, or that the
6 arbitrator's decision was completely irrational or completely
7 disregarded the clear, applicable rules of law. Rather Plaintiffs
8 argue that the arbitrator committed errors in her legal analysis.
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10 *Id.* at *10-11. By contrast, Plaintiffs contend that the arbitrator in this case did, in fact, dispense
11 his own brand of industrial justice, made public policy, and issued a decision that was
12 "completely irrational." *See* Plaintiffs' Motion at 13:1-21.

13 Thus, the *Spradlin* decision does not provide this Court with any additional authority that
14 is relevant to Plaintiffs' Motion. Defendant's submission of the *Spradlin* decision as
15 supplemental authority is misplaced and should be rejected by this Court.
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17 DATED: June 29, 2011

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19 By: s/ Ben F. Easterlin IV
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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2011, I electronically transmitted the foregoing
PLAINTIFFS' RESPONSE TO DEFENDANT TRUMP RUFFIN TOWER I LLC'S
NOTICE OF SUPPLEMENTAL AUTHORITY to the Clerk's Office using the CM/ECF
system for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all
counsel being registered to receive Electronic Filing.

s/ Ben F. Easterlin
Ben F. Easterlin